

Nova Marine, Inc. and Local Lodge S-9, District Lodge 4, Industrial Union of Marine & Shipbuilding Workers of America, International Association of Machinists & Aerospace Workers, AFL-CIO. Case 21-CA-29176

August 31, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charges filed by Local Lodge S-9, District Lodge 4, Industrial Union of Marine & Shipbuilding Workers of America, International Association of Machinists & Aerospace Workers, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on March 30, 1993, against Nova Marine, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and complaint,¹ the Respondent failed to file an answer.

On July 23, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 27, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 16, 1993, wrote to the Respondent advising that unless an answer was received July 20, 1993, a Motion for Summary Judgment would be filed.²

¹ The charges and complaint were served by certified mail, return receipt requested. The second amended charge and the complaint were also served by certified mail but were returned "unclaimed." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Moreover, we note that the second amended charge and the complaint were later served on the Respondent in person by hand delivery.

² The letter was sent as a courtesy. It is not a requirement of law that such a letter be sent. See NLRB Casehandling Manual (ULP) sec. 10280.3 and G.C. Mem. 90-11. The letter was sent by regular mail and was returned to the Regional Office marked "Moved, Left No Address." The Respondent's failure to inform the Regional Of-

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Wilmington, California, has been engaged in the business of general ship repairs. During the 12-month period ending December 31, 1992, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Respondent's facilities wherever located nationally or internationally who work on the construction, conversion, scrapping and/or repairing of any vessel on the Pacific Coast including, but not limited to, dredges, floating drydocks [sic], offshore drilling vessels, barges, mobil [sic] drilling platforms, and all auxiliary equipment used in conjunction therewith, excluding all firemen, supervisory employees above leaderman, and guards as defined under the Act.

Since on or before February 1, 1992, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, the most current of which is in effect from February 1, 1992, to February 2, 1995.

Since on or about February 1, 1992, the Union has been the exclusive collective-bargaining representative of the unit employees. At all times since about February 1, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's unit employees.

About February 1, 1992, the Respondent and the Union entered into a collective-bargaining agreement

fice of its most current address cannot defeat the purposes of the Act. See, generally, *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992) (not printed in bound volumes).

which is in effect by its terms from February 1, 1992, to February 2, 1995. The Respondent has failed to honor the terms and conditions of that agreement by:

(i) Since on or about November 1, 1992, failing and/or refusing to transfer union dues to the Union as required under the union security clause of the agreement.

(ii) Since on or about November 1, 1992, failing and/or refusing to pay insurance premiums as required under the health and welfare clause of the agreement.

(iii) Since on or about December 18, 1992, failing and/or refusing to pay wages as required under the schedule of wages clause of the agreement.

(iv) Since on or about January 11, 1993, failing and/or refusing to recall unit employees to work according to seniority as required under the seniority clause of the agreement.

(v) Since on or about January 28, 1993, failing and/or refusing to deduct union dues from the unit employees' payroll checks as required under the union security clause of the agreement.

The Respondent engaged in this conduct without the Union's consent. The terms and conditions affected are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By failing to honor the terms of its collective-bargaining agreement as set forth above, the Respondent has violated Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be required to remit to the Union the union dues for those employees who have executed dues checkoff authorizations that have not been remitted since on or about November 1, 1992, with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be ordered to make whole its employees for failure to pay insurance premiums since on or about November 1, 1992, for failure to pay contract wages since on or about December 18, 1992, and for failure to recall according to seniority since on or about January 11, 1993, with interest thereon to be computed in accordance with *New Horizons*, supra. In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or recall by order of seniority as set forth in *Kraft Plumbing & Heating*, 252 NLRB

891 fn. 2 (1980), enf'd. mem. 661 F.2d 940 (9th Cir. 1981). Finally, we shall order the Respondent to honor its contractual obligation to deduct union dues for those employees who have executed dues checkoff authorizations. The Union shall be made whole for failure to deduct dues since on or about January 28, 1993, by reimbursement with interest computed in the manner prescribed in *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Nova Marine, Inc., Wilmington, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement.

(b) Failing and/or refusing to transfer union dues to the Union as required under the union security clause of the agreement.

(c) Failing and/or refusing to pay insurance premiums as required under the health and welfare clause of the agreement.

(d) Failing and/or refusing to pay wages as required under the schedule of wages clause of the agreement.

(e) Failing and/or refusing to recall unit employees to work according to seniority as required under the seniority clause of the agreement.

(f) Failing and/or refusing to deduct union dues from the unit employees' payroll checks as required under the union security clause of the agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions contained in the 1992-1995 collective-bargaining agreement.

(b) Remit to the Union the union dues for employees who executed dues checkoff authorizations that have not been remitted since on or about November 1, 1992, with interest as described in the remedy section of this decision.

(c) Remit insurance premiums not paid since November 1, 1992, as required by the contract and make employees whole, with interest, for any expenses ensuing from its failure to do so.

(d) Pay the wages as required under the schedule of wages clause of the contract and make employees whole, with interest, for its failure to do so since December 18, 1992.

(e) Recall employees as required under the seniority clause of the contract and make employees whole, with interest, for its failure to do so since January 11, 1993.

(f) Honor the dues deduction clause of the contract and make the Union, whole, with interest, for its failure to do so since January 28, 1993.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facility in Wilmington, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms and conditions of employment set forth in our collective-bargaining contract with Local Lodge S-9, District Lodge 4, Industrial Union of Marine & Shipbuilding Workers of America, International Association of Machinists &

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Aerospace Workers, AFL-CIO, covering the following unit of employees:

All production and maintenance employees of Nova Marine, Inc.'s facilities wherever located nationally or internationally who work on the construction, conversion, scrapping and/or repairing of any vessel on the Pacific Coast including, but not limited to, dredges, floating drydocks [sic], offshore drilling vessels, barges, mobil [sic] drilling platforms, and all auxiliary equipment used in conjunction therewith, excluding firemen, supervisory employees above leaderman, and guards as defined under the Act.

WE WILL NOT fail to transfer union dues to the Union as required under the union security clause.

WE WILL NOT fail to pay insurance premiums as required under the health and welfare clause.

WE WILL NOT fail to pay wages as required under the schedule of wages clause.

WE WILL NOT fail to recall unit employees to work according to seniority as required under the seniority clause.

WE WILL NOT fail to deduct union dues from the unit employees' payroll checks as required under the union security clause.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL transfer union dues to the Union and deduct union dues from unit employees' payroll checks as required under the union security clause, and WE WILL make the Union whole, with interest, for our failure to do so.

WE WILL pay insurance premiums as required under the health and welfare clause, pay wages as required under the schedule of wages clause, and recall unit employees to work according to seniority as required under the seniority clause and WE WILL make our employees whole, with interest, for our failure to do so.

NOVA MARINE, INC.